

# From The Panama Papers To Odebrecht: Illicit Financial Flows From Brazil

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## Abstract

*Brazil has garnered the world's attention recently with a backdrop of political scandals, corruption allegations, world-renown sporting competitions and an economy in turmoil. It has been nothing less than a roller coaster for the citizens of Brazil who have savored some of the ups and downs of the last ten years.*

*In 2007 Brazil was the darling of the developing world. It appeared that the nation that is paradoxically called the "nation of tomorrow" had finally arrived at its tomorrow. With the commodity boom stocking its coffers, millions of Brazilians out of poverty due to the policies of President Luis Inácio Lula da Silva, Brazil could go through the recession relatively unscathed until the commodity market collapsed and Brazil suffered its own recession in 2015 along with series of political calamities. Aside from the impeachment of President Rousseff and Operação Lava Jato (the so-called Car Wash scandal that has implicated several politicians due to bribery through kickbacks they received through the oil giant Petrobras) that was in full swing there was another socio-political phenomenon that was not receiving the press coverage that it was deserving. The Brazilian government was and still is in a struggle to emphasize accountability in the realm of money laundering and illicit finance flows; this endeavor has proved cumbersome as off shore tax havens have and continue to provide a refuge for the funds of fraudulent companies such as Odebrecht and unethical individuals. The abuse of offshore tax havens by the Brazilian political elite, by the "outing" of the Panama Papers as well as the use of OFCs (Offshore Financial Centers) by Odebrecht has forced the Brazilian government to take action and stem the flow of illicit finance.*

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## Offshore Financial Centers

The Bank of International Settlements classifies tax havens as "offshore banking centers" or regional financial centers that did not grow organically.<sup>1</sup> Tax havens share some of the same characteristics that include but are not limited to:

- Effective Banks Secrecy
- Professional or commercial secrecy obligations preventing lawyers, accountants or company employees from revealing confi-

dential information about clients, including violations of other countries' laws

- Company and trust laws with very loose disclosure requirements
- Few, and preferable no restrictions or regulations concerning financial transactions
- Ease of establishment of new companies
- The territory must possess political and economic stability
- The tax haven should be either supported by a large international financial market, or equipped with sophisticated information exchange facilities and/or be within easy reach of a major financial center

<sup>1</sup> Ronen Palan. *The Offshore World: Sovereign Markets, Virtual Places, & Nomad Billionaires* (Ithaca, NY: Cornell University Press, 2003), 39.

- The territory's name should not be tainted by scandals
- It is desirable that such havens have agreements with major countries to avoid double taxation.<sup>2</sup>

The main appeal of tax havens is their lack of taxes and regulation. Several of these tax havens also known as offshore financial centers are in the Caribbean such as the Cayman Islands, Antigua and Barbuda, Bermuda, Bahamas, and the British Virgin Islands, some are in Europe such as Switzerland and Luxembourg. Because of the fame along with the proximity that certain OFCs have, Brazilians are inclined to use OFCs in Switzerland or those found in the Caribbean. From 2004 to 2013 Brazil has averaged about \$22 billion per year in illicit finance outflows. Such a figure is damaging to an emerging market as Brazil where that money could be used for much needed infrastructure, educational or civic development. Globally, the amount of accumulated wealth registered in offshore havens is at about \$21 trillion or around 18% of the aggregate global wealth (as opposed to global gross domestic product at around \$70 trillion).<sup>3</sup> Revelations through media have assisted in casting light on where these outflows go to and who exactly is behind them.

## The Panama Papers and Brazil

When the Panama Papers came out in 2015 several prominent Brazilians were among those listed as having offshore accounts and of those named a notable fraction has been involved in corrupt business dealings or outright money laundering. The former Speaker of the Brazilian house Eduardo Cunha, Senator Edison Lobão, ex-federal representative Joal Lyra and several families tied to construction firms

such as the Mendés Junio, Queiroz Galvão and Schahin families have all been “outed” by the Panama Paper as having offshore accounts through the Panamanian law firm Mossack Fonseca. The 11.5 million documents released that are the Panama Papers reveal a company that specializes in hiding money for politicians and public figures from around the world. Panama's attorney general, Kenia Porcell, said she had information that identified Mossack Fonseca as a criminal organization that is dedicated to hiding monetary assets from suspicious origins; she said the firm's Brazilian representative had allegedly been instructed to conceal documents and to remove evidence of illegal activities relating to the Lava Jato case.<sup>4</sup> Charges have been brought against four individuals including the Mossack Fonseca partners as a result of the Panamanian investigation. The Panamanian attorney general further stipulated that the money in the Mossack Fonseca business dealings with Brazil come from bribes, circulated via certain corporate entities to return bleached or washed to Panama. There has been considerable fallout from the Panama Papers in Brazil and the political elite have felt the effects more pronounced than perhaps other implicated.

Once one of the most powerful men in the country, the former speaker of the house Eduardo Cunha, was arrested in late 2016 after having been charged with having over \$40 million bribery money in secret bank accounts offshore. Eduardo Cunha is currently going through an appeal process. Another politician to be convicted from the the Panama Papers is the former governor of the state of Rio de Janeiro, Sergio Cabral. Mr. Cabral was being awarded 5% on construction contracts awarded in the state of Rio de Janeiro by the corruption-ridden Odebrecht construction com-

<sup>2</sup> Ibid., 40.

<sup>3</sup> Anastasia Nesvetailova and Ronen Palan. “Offshore Finance and Shadow Banking: Regulation of the Dark Corners of the Financial System,” *Banking and Financial Services Policy Report* 33, no. 5 (2014): 20.

<sup>4</sup> Juliette Garside, “Panama Paper: Mossack Fonseca founders arrested over bribery scandal,” *The Guardian*. February 10, 2017, <https://www.theguardian.com/world/2017/feb/10/panama-papers-mossack-fonseca-offices-raided-over-odebrecht-bribery-scandal>

pany. The former governor of Rio de Janeiro would then pass off those bribes to two men named Renato and Marcelo Chebar who in turn placed the funds in several offshore banks set up through several front companies. Two of these front companies set up by the Chebars were Orly Trading Company and Wadebridge Development Inc.<sup>5</sup> Wadebridge Inc. was intermediated by a bank named Global Line Asset Management, all these companies were operated by the Mossack and Fonseca law firm in Panama.<sup>6</sup> The Chebar brothers along with the ex-governor Sergio Cabral were all convicted for money laundering and other crimes in association with Operação Lava Jato. Ironically these companies set up by the Chebar brothers were dissolved as soon as the investigation into the Lava Jato gained steam. Brazilian politicians are not the only ones to feel the sting from the Panama Papers several prominent businessmen have also been implicated in these telling documents and none has been more notorious than Brazil's former richest man, Eike Batista.

Eike Batista was jailed in a maximum-security prison in Bangu, Rio de Janeiro until he was released under habeas corpus awaiting trial for charges of bribery.<sup>7</sup> Batista ran several companies in the logistics, petroleum, and mining sectors in Brazil and the gregarious entrepreneur was striving to become the world's richest person. Then the Panama Papers came out and divulged the fact that the Brazilian billionaire let the law firm Mossack and Fonseca run 22 offshore businesses for him. These dealings along with the accusations that he

awarded the former governor of Rio Sergio Cabral \$16.5 million dollars for contracts in the state of Rio de Janeiro has tarnished his image (he fully cooperated with authorities, still facing several legal battles and charges).<sup>8</sup>

## Antigua & Barbuda, An Offshore Paradise?

Illicit actors are surreptitious and in being so they need a place to stow or hide their finances. The offshore tax havens that are found in the Caribbean are a gem for those that are willing and or able to transfer their funds so that they may be kept private and evade investigative eyes. One of the islands in the West Indies that has drawn quite a bit of attention from its connection to the widely known Odebrecht scandal is the island nation of Antigua and Barbuda. The former British colony has is an offshore tax haven. Like several of the tiny countries where offshore banking is a thriving enterprise the actual banks themselves in these localities are nothing more than an uninviting building with a sign out front. It is with relative ease that one can open an international business, LLC, or form a Partnership in Antigua and Barbuda as there are no residency requirements and registration processes are somewhat smooth though there are some stipulations such as having a physical address depending on the type of business one wishes to found.<sup>9</sup>

The two-island nation is no stranger to money laundering scandals and has often found itself in the midst of such fiascos. Antigua and Barbuda had already achieved notoriety through the case of former Ukrainian Prime Minister Lazerenko where he bought an Antiguan bank named European Federal Credit Union in 1997 and laundered about \$100 mil-

<sup>5</sup> André Shalders. Leia que os Panama Papers falam do esquema de Cabral no exterior," *Poder 360*. January 27, 2017, <https://www.poder360.com.br/panama-papers/leia-o-que-os-panama-papers-revelam-sobre-o-esquema-de-cabral-no-exterior/>

<sup>6</sup> Ibid.,

<sup>7</sup> Thiago Faria, "Revoluções cometem erros", afirma Eike Batista sobre sua prisão no Lava Jato," *O Estado de São Paulo* São Paulo, Nov. 29, 2017. <http://politica.estadao.com.br/noticias/geral,revolucoes-cometem-erros-afirma-eike-batista-sobre-sua-prisao-na-lava-jato,70002101849>

<sup>8</sup> Ibid.,

<sup>9</sup> Emile van der Does de Willebois, Emily M. Halter, Robert A. Harrison, Ji Won Park, and J.C. Sharman, *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Assets and What to Do About It* (Washington D.C: Stolen Asset Recovery Initiative, The World Bank 2011), 220-247.

lion through there that hailed from his time as Prime Minister, in total he laundered about \$326 million around the world then the U.S. Justice Department caught up with him under the USA PATRIOT Act.<sup>10</sup> The government of Antigua and Barbuda suffered a public shaming when the businessman and ambassador from the Caribbean country, Bruce Rapport, construed several corporate vehicles (CVs) to extort money from the Government of Antigua and Barbuda (GOAB) when he was apparently orchestrating a debt payoff to Japan.<sup>11</sup> Through investigations the GOAB was able to recover the \$14 million that was embezzled for Bruce Rapport's personal gain.<sup>12</sup> These scandals were not as media focused as the Odebrecht graft machine that moved millions through an Antiguan bank.

## Odebrecht

In St. John's, the rutted and often smelly streets are dotted with banks that cater to foreigners and the Structured Operations department of the Brazilian Construction conglomerate Odebrecht was taking full advantage of the Antiguan Capital's lax regulations through the Antiguan Overseas Bank (AOB).<sup>13</sup> The Structured Operations department was created for the sole purpose of graft and illicit deals. Hilberto Silva, Fernando Migliaccio, and Luiz Eduardo Soares were all Odebrecht company men who worked in the Structured Operations department in Odebrecht, while securing contacts for infrastructure projects throughout Latin America. They were able to secure large infrastructure contracts through creating fake engineering, construction, and consulting companies that used secret bank accounts to pay fake invoices submitted by fake customers; some of these people they in-

fluenced were politicians—the company had been bankrolling campaigns in Brazil, including presidential campaigns.<sup>14</sup> Odebrecht had funded campaigns to elect half a dozen presidents in Latin America; buy the friendship of heads of state in Angola, Peru, and Venezuela; and pay off hundreds of legislators from Panama to Argentina.<sup>15</sup> The Justice Department has called Odebrecht the biggest corruption case in history, never before has one company through illicit finance flows influenced so much.

Because of the ongoing *Operação Lava Jato* investigation (Operation Car Wash) case Brazilian police had discovered Odebrecht's accounts in Antigua and Barbuda. Odebrecht was part of a cartel of engineering companies that paid bribes and kickbacks in exchange for being allowed to rig the bidding for contracts, especially at Petrobras (this was the original focus of the Car Wash investigation).<sup>16</sup> Brazil in the 2000s under the leadership of President Lula was growing at an effervescent pace and as the country grew so did Odebrecht consistently funneling cash to Lula's allies throughout the region.<sup>17</sup> The former Brazilian president has negated any affiliation or wrongdoing associated with Odebrecht or the Lava Jato case, though he himself has come under investigation for corruption charges for fraudulent real estate dealings and other facets of the Lava Jato case. By Odebrecht's own admission in a U.S. District Court in Brooklyn in December 2016, the Structured Operations department doled out \$788 million in bribes in Brazil and in 11 other countries, securing more than 100 contracts that generated \$3.3 billion of profit for the company.<sup>18</sup> The CEO of Odebrecht Marcelo Odebrecht told prosecutors that 0.5% to 2% of yearly revenue was directed to illicit payoffs mainly to Brazilian politicians and executives of state companies,

<sup>10</sup> Ibid., 202-203.

<sup>11</sup> Ibid., 172-173.

<sup>12</sup> Ibid., 174.

<sup>13</sup> Michael Smith, Sabrina Valle, and Blake Schmidt, "No One Has Ever Made a Corruption Machine Like This One," Bloomberg Businessweek, June 8th, 2017.

<sup>14</sup> Ibid., 2.

<sup>15</sup> Ibid., 2.

<sup>16</sup> Ibid., 6.

<sup>17</sup> Ibid., 6.

<sup>18</sup> Ibid., 4.



particularly the national oil company, Petrobras.<sup>19</sup> Graft expenses was estimated to be at about \$611 million depending on the demands of Odebrecht's political contracts.<sup>20</sup>

The Structured Operations department was a well-oiled machine that was even included in the company's flow charts it was consistently supplemented by a collection of Odebrecht employees and contractors with special skills such as accountants who set up front companies and computer programmers who designed and ran a secret messaging system.<sup>21</sup> Hilberto Silva the fidgety member of the Structured Operations department hired a Miami lawyer to do paperwork for shell companies and in São Paulo another lawyer did up contracts for fake services to back up the bribe money.<sup>22</sup> By late 2010 Structured Operations had run more than \$1 billion through Antigua Overseas Bank; the bank was in a liquidity crisis and started to collapse, this drew the attention of Antiguan regulators.<sup>23</sup> With \$15 million in an AOB account that was one of Odebrecht's biggest and most trusted conduits through a shell company called Kleinfeld Service Ltd, Silva tried to get the money out before the suspicious Antiguan authorities took action.<sup>24</sup> The maneuver to remove the funds or buy AOB came too late and suspicious transaction reports were filed by the Antiguan banking regulators about Kleinfeld and other Odebrecht accounts.<sup>25</sup> The Antiguan authorities were now on to Odebrecht and in due time so would the Brazilian authorities.

Since AOB was now compromised the Odebrecht men needed another bank to use and they found one in Antigua that was somewhat dormant named Mienl Bank AG, whose headquarters was in Austria. The Structured Operations cronies of Soares and Migliaccio bought 51% of the Mienl Bank in Antigua. Once the

bank was bought Silva and his team opened dozens of accounts at Meinl Bank for their fake consulting firms and other companies.<sup>26</sup> 33 banks fed Odebrecht's money into at least 71 different Antiguan accounts and Mienl Bank AG stated in an email that it had "no managerial control or operational insight" into its Antigua Branch since selling its majority stake in 2010 and that it sold its residual 33% stake in late 2014.<sup>27</sup>

Luiz Soares, who was accustomed to getting the job done conspired with Luiz Franca, Antigua's honorary consul in Brazil to persuade Antiguan Prime Minister Gaston Browne to block Brazil's request to receive documents on Odebrecht's accounts in the island nation.<sup>28</sup> The fact that the Brazilian honorary consul in Antigua and Barbuda was involved in this corruption ring illustrates the power and will of those in Odebrecht to break and bend the law to their own satisfaction. Odebrecht proposed to pay a lawyer named Casroy James to help sway the prime minister; James has emphatically denied this stating that his meetings with Odebrecht officials were about processing applications for a GOAB program that offered Antiguan citizenship to foreigners who invested in the country.<sup>29</sup> Eventually James triumphed in getting the Odebrecht men in front of Antiguan Prime Minister Brown who was warned by Soares about how dangerous the Brazilian investigation was going to be to Antigua and Barbuda; nevertheless, Brown retorted that Antigua Police Investigators were already assembling volumes of documents for the Brazilian authorities as required under agreements between the two countries.<sup>30</sup> This was the beginning of the end of Structured Operations in Odebrecht and the construction firm was about to be dealt a severe blow.

The three leaders of Structured Operations, Silva, Migliaccio, and Soares worked in

<sup>19</sup> Ibid., 5.

<sup>20</sup> Ibid., 5

<sup>21</sup> Ibid., 7.

<sup>22</sup> Ibid., 7.

<sup>23</sup> Ibid., 8.

<sup>24</sup> Ibid., 8.

<sup>25</sup> Ibid., 8.

<sup>26</sup> Ibid., 9.

<sup>27</sup> Ibid., 9.

<sup>28</sup> Ibid., 3.

<sup>29</sup> Ibid., 3.

<sup>30</sup> Ibid., 4.

## VALUE OF BRIBES PAID BY ODEBRECHT AND VALUE OF CONTRACTS OBTAINED THROUGH BRIBERY

No	Country	Total Bribes Value	Value of Obtained Contracts	Year
1	BRAZIL	\$349 Million	\$1.9 Billion	2003 - 2016
2	VENEZUELA	\$98 Million	NA*	2006 - 2015
3	DOMINICAN REPUBLIC	\$92 Million	\$163 Million	2001 - 2014
4	PANAMA	\$59 Million	\$175 Million	2010 - 2014
5	ANGOLA	\$50 Million	\$261.7 Million	2006 - 2013
6	ARGENTINA	\$35.5 Million	\$278 Million	2007 - 2014
7	ECUADOR	\$33.5 Million	\$116 Million	2007 - 2016
8	PERU	\$30.4 Million	\$543 Million	2005 - 2014
9	GUATEMALA	\$18 Million	\$34 Million	2013 - 2015
10	COLOMBIA	\$11 Million	\$50 Million	2009 - 2014
11	MEXICO	\$10.5 Million	\$39 Million	2010 - 2014
12	MOZAMBIQUE	\$0.9 Million	NA*	2011 - 2014
Total		\$787** Million	> \$3.5 Billion	2001 - 2016

\* The US indictment does not provide the estimated value of the contracts illegally obtained in this country

\*\*The values in the US indictment are approximates, which explains the slight difference with the total amount of \$788 million raised by the Justice Department

Source: US Department of Justice

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Santo Domingo, Dominican Republic out of reach of investigators whilst feverishly trying to unwind Odebrecht's bribery operations.<sup>31</sup> Through a suspicious email that caught the eye of a Brazilian Federal Police agent named Felipe Pace a court order was secured in Brazil requiring Microsoft Corp. to give Pace access to the Hotmail account of Fernando Migliaccio.<sup>32</sup> Within the account's in-box, spreadsheets and emails mapped out the daily traffic of the bribery group.<sup>33</sup> In a short span afterward the leaders of Structured Operations were arrested as was Marcelo Odebrecht who was convicted of crimes including corruption, and money laundering and sentenced to 19 years in jail.<sup>34</sup> Several Odebrecht employees that were jailed have testified in exchange for leniency, even Marcelo Odebrecht in exchange

for cooperation had his sentence reduced to two and a half years in prison and five years of house arrest. The once shining star of Brazilian business, Odebrecht, announced that it wanted to "turn the page and leave its errors in the past."<sup>35</sup>

In a military base in Antigua and Barbuda Edward Croft, a lanky police investigator who runs the office of National Drug and Money Laundering Policy, has been fielding a torrent of requests for documents, spreadsheets, and background reports from investigators the world over.<sup>36</sup> Croft and his two man team are probing the accounts of Odebrecht's Meinl Bank while those tied up with the bribery ring are in the island's courts trying to get at the money.<sup>37</sup> The prime minister of Antigua and Barbuda, a former banker himself, has stated that he is doing all he can to ensure that the

<sup>31</sup> Ibid., 11.

<sup>32</sup> Ibid., 14.

<sup>33</sup> Ibid., 14.

<sup>34</sup> Ibid., 15.

<sup>35</sup> Ibid., 15.

<sup>36</sup> Ibid., 16.

<sup>37</sup> Ibid., 17.

former British Colony frees itself from criminals who wish to use the Caribbean country as a base for financial crimes.<sup>38</sup> Prime Minister Gaston Browne has adamantly denied any involvement in the Odebrecht scandal.

The Odebrecht bribery ring reached around the world. In Angola over \$50 million were paid in bribes to government officials, in Argentina the construction company paid over \$278 million in bribes and in Peru former President Oscar Toledo has been implicated as having had accepted bribes from Odebrecht.<sup>39</sup> The Odebrecht scandal has swept up several countries including Panama, Venezuela, Mozambique, Colombia, and Dominican Republic to name a few, several of these countries are conducting ongoing investigations into the Brazilian firm's businesses and contacts in their respective territories.

### **Brazil's Anti-Money Laundering Capabilities**

Brazil is not aloof to money laundering; it has made substantial inroads over the last few decades in the prosecution of money laundering. At the service of the President and the Executive branch of Brazil is Brazil's intelligence agency the ABIN (Agência Brasileira de Inteligência) that offers analysis, risk evaluation, prevention and repressible action against money laundering.<sup>40</sup> The 18-year-old ABIN plays an important role and participates in the COAF (Council for Financial Activities Control). COAF, created in 1998, falls under the Brazilian Ministry of Finance and is the leading government entity responsible for investigating financial crimes in the country. It is comprised of representatives from the

regulatory and law enforcement agencies, including the Central Bank and Federal Police. COAF works when a financial authority informs COAF of suspicious acts when evidence is collected. When the competent financial authorities do not have any regulatory authority or oversight of the suspicious activities, specified in article 9 of the money laundering law (12683/12), but have strong evidence of the crimes provided for by law 9613/98, it shall report to COAF, so that it will review and if necessary, immediately collect the factual elements of the offense transitioning evidence to the Public Prosecutor.<sup>41</sup> Laundered money which is sent to tax havens with the objective of hiding illicit transactions from Brazilian authorities, will be requested back to the country as per Law 9.613 of 3 March 1998, criminalizing money laundering through criminal acts that includes drug trafficking, terrorism, arms trafficking, extortion, and organized crime.<sup>42</sup> COAF acts as the Financial Intelligence Unit against illicit finance as recommended by the Financial Action Task Force (FATF), an inter-governmental policy developing organization to combat money laundering.<sup>43</sup>

Decree No. 6.061 dated 15 March 2017 created the Department of Asset Recovery and International Legal Cooperation – DCRI. The DCRI works in hand with COAF to punish criminals and recuperate assets.

DCRI's responsibilities include

- Articulate, integrate and propose Governmental Actions in all aspects related to money laundering, transnational organized

<sup>41</sup> Laura Bijos, "The Crime of Money Laundering in the Brazilian Legislation," in *Law and Business Review Of The Americas*. 2014, (Dallas: Southern Methodist University of Dedman School of Law, 2014), 17.

<sup>42</sup> Ibid., 21.

<sup>43</sup> Jose de Carlos Oliveira, Leonardo Simões Agapito and Matheus de Alencar e Miranda, O MODELO DE 'AUTORREGULAÇÃO REGULADA' E A TEORIA DA CAPTURA: OBSTÁCULOS À EFETIVIDADE NO COMBATE À LAVAGEM DE DINHEIRO NO BRASIL, *Quaestio Iuris* Vol. 10, No. 1 (2017): 374.

<sup>38</sup> Ibid., 17.

<sup>39</sup> "Odebrecht: Entenda a maior caso de suborno na história," *Terra Noticias*. December 22, 2016. <https://www.terra.com.br/noticias/brasil/odebrecht-entenda-o-maior-caso-de-suborno-da-historia,2ad4c9f40bf9d93e1b2fbao8935c112cokps tq92.html>

<sup>40</sup> "Lavagem de Dinheiro," access: December 5, 2017. <http://www.abin.gov.br/atuacao/areas-prioritarias/lavagem-de-dinheiro/>.

<b>Selected Activities Realized by COAF (Council for Financial Activities Control)</b>			
	2012	2013	2014
Possible Suspicious Activities Reports Received	1,587,427	1,286,233	1,144,542
Financial Assets blocked (in millions of BRL)	484	927,5	61,4
Punitive Action Pursued	12	10	8

crime, recovery of assets and international legal cooperation

- Promote the articulation of the Executive, the Legislative and the Judiciary, including the Federal Government Ministries and State, regarding the fight against money laundering and transnational organized crime
- Negotiate agreements and coordinate implementation of active and passive international legal cooperation, including letters rogatory
- Promote the dissemination of information on asset recovery and international legal cooperation, preventing and fighting money laundering and transnational organized crime in the country<sup>44</sup>

In 2012 the anti-money laundering Law 9.613/98 was amended to ensure better effectiveness and practicality and was named Law 12.6983/2012. The first article of the law shows a more encompassing approach when it was amended in the 2012 version then in the 1998 version of the law. This evolution of the anti-money laundering law showcases Brazil's willingness to consistently innovate and become a more effective player against money laundering.

The Central Bank of Brazil like COAF can apply sanctions to illicit actors. The Brazilian Central Bank's administrative guidelines regarding compliance adhere to the Financial Action Task Force's recommendations (FATF).<sup>45</sup> A cornerstone of these recommen-

dations is the 10<sup>th</sup> recommendation delineating that financial institutions cannot maintain anonymous accounts especially when the value and complexity of transactions increases. In accord with FATF recommendations the Central Bank of Brazil must apply sanctions or give special attention to:

- Shell Banks and the continuous monitoring of them
- Be able and willing to inspect, demand obligatory information, and impose financial and disciplinary sanctions in case an entity is not operating within the FATF guidelines
- Must centrally compile information related to investigations and analysis
- Must be able to freeze assets deriving from criminal activity
- Must be able to use coercive powers to obtain documents, testimonials, and other evidence necessary for an investigation
- Maintain and sustain information relevant to its systems, it must keep itself continuously updated
- It must provide timely, adequate, and specific feedback to ensure that entities can follow guidelines and compliance
- Guarantee that the judicial system has proportional sanctions<sup>46</sup>

In 2009 over 93,000 suspected operations by the regulatory sectors of the Central Bank were passed on to the financial intelligence unit that is COAF and 57% of these were indeed illicit dealings.<sup>47</sup> It is assumed that the number of communications regarding illicit fi-

<sup>44</sup> Bijos, *Ibid.*, 14.

<sup>45</sup> Jose de Carlos Oliveira, Leonardo Simões Agapito and Matheus de Alencar e Miranda, O MODELO DE `AUTORREGULAÇÃO REGULADA` E A TEORIA DA CAPTURA: OBSTÁCULOS À EFE-

TIVIDADENO COMBATE À LAVAGEM DE DINHEIRO NO BRASIL, *Quaestio Iuris* Vol. 10, No. 1 (2017): 370.

<sup>46</sup> *Ibid.*, 373.

<sup>47</sup> *Ibid.*, 378.



nance communicated by the Brazilian authorities to either the Central Bank or COAF has continuously superseded one million in recent years a dramatic increase from 2009.<sup>48</sup>

Recent Developments in Brazil have led to increased accountability and made the country more visible as a protagonist against illicit finance flows. Switzerland's highest court, the Swiss Federal Court, upheld a ruling to release documents regarding the Odebrecht investigation.<sup>49</sup> Swiss prosecutors have said they received reports of about 340 suspicious banking relations in the case, opened about 60 inquiries and frozen roughly \$800 million since 2014.<sup>50</sup> Brazilian authorities have requested information on more than 1000 accounts from more than 40 banks.<sup>51</sup> Another, additional positive signs, are the actions of the Federal Supreme Court that have indicted the ex-minister of National Integration, Geddel Vieira on money laundering charges after the former minister laundered around \$4 million through four front companies.<sup>52</sup> Even ex-President Lula is being investigated for receiving bribes from Odebrecht in the sum of around \$4 million and the infamous Judge Sergio Moro is leading the inquiry.<sup>53</sup> The institutions and tools are in place and becoming more known to the Brazilian authorities that will likely lead

<sup>48</sup> Ibid., 379.

<sup>49</sup> Reuters Staff, "Brazil gets access to Swiss accounts of politicians, Petrobras executives," Reuters, <http://www.reuters.com/article/us-brazil-corruption-swiss/brazil-gets-access-to-swiss-accounts-of-politicians-petrobras-executives-idUSKCN12J1FS>

<sup>50</sup> Ibid.,

<sup>51</sup> Ibid.,

<sup>52</sup> Jornal Do Brasil, Fachin Manda bloquear \$12,8 milhões de Geddel Vieira Lima e parentes, December 6, 2017, <http://www.jb.com.br/pais/noticias/2017/12/06/Fachin-manda-bloquear-r-128-milhoes-de-geddel-vieira-lima-e-parentes/>

<sup>53</sup> Época Negócios. "Lava Jato pede perícia em dados de departamento de propinas de Odebrecht, São Paulo, September 12, 2017. <http://epocanegocios.globo.com/Brasil/noticia/2017/12/epoca-negocios--lava-jato-pede-pericia-em-dados-do-departamento-de-propina-da-odebrecht.html>

Brazil to become a more aggressive actor in the realm of combating illicit finance.

## Conclusion

The Brazilian system is working as the Brazilian Federal Revenue Service has claimed a considerable amount of monies from offshore accounts as the Brazilian version of the Offshore Voluntary Disclosure Program is being enforced and those that have accounts that have been disclosed are being subject to penalties and taxes. The Repatriation Law 12.534 is being used as a mechanism to gain tax revenue from Brazilians who hold accounts offshore. While much of the legal framework needed to combat, corruption has been put in place over time, its success depends on the amount of political will available to strictly and fervently enforce it over the medium and long-term.<sup>54</sup> When understanding, illicit financial flows regarding Brazil it is also worth noting to look at trade misinvoicing. Though this topic was not covered in this paper goods either exported or imported need to be recorded at their accurate market price.

No one can deny the scale and acts of these illicit operations were detrimental. Billions of dollars have been lost by Brazil that could have been utilized elsewhere. One very important aspect to regard is that these allegations and convictions are occurring. Brazil being in the global spotlight as the release of the Panama Papers and the Odebrecht scandal has become a force as its institutions are gaining strength. The Central Bank, COAF, Public Prosecutors, and the Brazilian Federal Policy are pursuing illicit finance by conducting investigations, making convictions and arresting people. Through these high-profile cases the world has taken notice and Brazil has no choice but to act. There is an accountability that is taking place in the country of tomorrow that perhaps

<sup>54</sup> "Brazil Country Case Study: Illicit Finance, Capital Flight and Macroeconomic Flows. 1960-2012," 2014, Washington D.C. *Global Financial Integrity*. Access: December 2, 2017, <http://www.gfintegrity.org/issues/data-by-country/>

gives credence to the belief that tomorrow has finally arrived.

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